IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEALS Nos. 154/1998 to 157/1998

in

SPECIAL CIVIL APPLICATIONNo 8813 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJASHRI KAMDAR SANGH

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 154 of 1998

MR BM MANGUKIYA for Appellant
Ms. Manisha Lavkumar, AGP for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2
M/S THAKKAR ASSOC. for Respondent No. 4

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/08/2000

ORAL JUDGEMENT (Per: R.K. Abichandani,J.)

These four appeals are directed against the order dated 22nd January, 1998 of the learned Single Judge in four writ petitions which were filed by the appellant-Union seeking a direction on the respondents nos.2 and 3 to take action against the respondent no.4 for declaring an illegal lockout and to ensure that the workmen are allowed to resume their work and paid their wages in accordance with law. A direction was also sought on the respondents nos.2 and 3 authorities to take action against the respondent no.4-Company and its group for preventing them from resorting to any unfair labour practice by forcing the workmen to resign from their Union or by taking undertakings from them that they would accept a fresh settlement and would not claim minimum wages.

The learned Single Judge had called for a report from the officers of the Labour Department and held that he did not find anything in the report which would show that there was any lockout declared.

There was a statement made by the learned Counsel for the Company in these appeals that a majority of the workmen were attending to their duties. After some discussion, the entire controversy boiled down to the fact that the workmen who are not yet taken on duty should be taken on duty. According to the learned Counsel appearing for the Company the workmen are not prevented from joining their duty while according to the learned Counsel for the Union though most of the workmen have joined their work, some of them have not been allowed to resume their duty without a bond being executed by them. That need not detain us more because if the majority of the workmen have already been taken on duty, similar treatment should be given to those who have not yet resumed their duty. If any workmen are illegally prevented from joining duty, they can take recourse to law.

It is pointed out to us by the learned Counsel appearing for the respondents nos.2 & 3 that a fresh 2P.settlement has taken place which has been stated in paragraph 2 of the affidavit of one Mr. K.U. Shah, Assistant Labour Commissioner, Godhra, copy of which is referred by the learned Counsel for the parties but the original is not traceable on the record. It is stated by

the learned Counsel for the respondents nos. 2 and 3 that on 24th September, 1979 a fresh 2P. settlement was executed prior to the completion of the duration of the earlier settlement, and therefore, proposal for sanctioning prosecution under Section 19(2) was dropped. After the fresh 2P. settlement had taken place most likely all the controversies would have been resolved.

It would appear that the respondents nos.2 and 3 had initiated action in the matter because the respondent no.3 called upon the management and the Union for negotiation on 1-12-1997 for resolving the dispute. It is stated that the Govt. Labour Officer had issued notice dated 25-12-1997 to the Company to show cause why action should not be taken for breach of Sec.25-T of the Industrial Disputes Act. Show cause notice was also issued to the Company on 19-12-1997 and proposal to sanction the prosecution was sent to the Dy. Commissioner of Labour on 29-1-1998. Therefore, so far prayer clause (a) is concerned, no further directions are required to be given by this Court. So far as the prayer that the employer should not require the members of the Union to resign, it is not demonstrated as to which employee was asked to resign from the Union and the learned Counsel appearing for the Company makes it clear that the Company would not ask any member of the Union to resign from the Union, and therefore, this question does not survive. As regards the acceptance of fresh settlement its efficacy and effect cannot be adjudicated upon directly in this appeal. Therefore, in sum total, if there are any workmen left out who have not resumed their duty, they can resume their duty within two weeks on furnishing the usual bond as may have been obtained from other similar workers without prejudice to their rights and contentions. If there is any dispute on that count the Union can espouse the cause of the workers before the appropriate forum, as observed by the learned Single Judge. We do not find any valid ground for interfering with the impugned decision of the learned Single Judge. All these appeals are therefore dismissed with no orders as to costs.

(R.K.Abichandani,J.)

(A.K.Trivedi,J.)

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